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IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5399 OF 2006

1. Jaswant Kaur B. Bansal)
)
2. Tejindersingh B. Bansal)
both partners of M/s.S.D.)
Industries, a registered)
Partnership firm carrying)
on business at 2/10, Singh
Industrial Estate, Ram)
Mandir Road, Goregaon (W)
Mumbai through their C.A.)
Shri Davinder Singh B.)
Bansal.) ... Petitioners.

Vs.

1. Maharashtra Industrial)
Development Corporation,)
having office at Mahpe,)
Sector-1, Bldg. No.2, 2nd)
floor, Gala No. 204,)
millennium Business Park)
Navi Mumbai-400 709.)
)
2. The State of Maharashtra)
having office at Mantralaya
Mumbai-400 023.) ... Respondents.

Mr. S. V. Kamdar with Mr. Vijay Sutrave, Advoate for the petitioner

Mr. P. P. Chavan with Mr. Vinay Bhathe & Ms. Geeta Khetle i/b Navdeep Vore & Associates for for respondent No.1.

Mr. R. D. Rane, Govt. Pleader for respondent No.2.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 24, 2007.

P.C.:

. Heard the learned advocates for the parties. Rule. By consent of both parties, rule made returnable forthwith.

2. The petitioners by filing this Writ Petition under Article 226 of the Constitution of India challenged the impugned order dated 5th May 2006, passed by the Regional Officer of respondent no.1, the decision of the Board Meeting of the first respondent, dated 24-2-2006, whereby the earnest money deposited by the petitioners towards allotment of the plot admeasuring about 2200 Sq.mts. at TTC Industrial Area, Rabale, District Thane, directed to be refunded. The petitioners also claimed directions under Article 226, to the respondent no.1 to allot and to hand over the possession of the plot as described in the petition.

3. The petitioners case in short is that they are the partners of a registered partnership firm

carrying on business of manufacturing Engineering Goods, General Fabrication, Hydraulic instrumentation, etc. The first respondent invited applications, for allotment of plots at TTC Industrial Area, Rabale, District Thane and accordingly, on 18th February 2005 petitioners submitted application to respondent no.1 seeking allotment of 2500 Sq.mt. for establishing a small scale engineering unit. It is the further case of the petitioner that their application was placed for consideration before the Land Allotment Committee of the first respondent and on 24th March 2005 the respondents issued their invitation to offer, requesting the petitioner to forward "blue application form" (letter of offer) alongwith demand draft of Rs.27,50,000/- within 15 days of receipt of the said letter for 2200 Sq.Mts. area of the land.

4. It is further case of the petitioner that they with great difficulty arranged for the funds towards the earnest money, and got prepared the pay order of Rs.27,50,000/-, dated 6th April 2005, alongwith the covering letter. The petitioners' representative went to the office of respondent

no.1 on 8-4-2005 alongwith letter dated 6-4-2005 together with demand draft dated 6-4-2005 and "blue application form". However, the employee of the first respondent who was sitting at the counter told the representative of the petitioners that his superior officer was not available to sign the receipt for Rs.27,50,000/-. The said employee told representative of petitioner to deposit said demand draft on 11-4-2005, as next two days were non working days of the first respondent. Thus according to the petitioner, there was no default on their part in making the payment of earnest money.

5. Petitioner further states that on 11th April 2005 they submitted their letter alongwith "blue application form" and demand draft for Rs.27,50,000/-. The said demand draft was accepted by the officers of the respondent without any reservation and same was encashed and the funds were credited to the accounts of first respondent.

6. The first respondent thereafter for about one year did not care to inform, as to when they

would hand over the plot to the petitioner. On the contrary, they were shocked to receive the letter dated 5th May 2006 on 16-5-2006, issued by the Regional Officer of the respondent no.1, thereby directing refund of an amount of Rs.27,50,000/- to the petitioner which amount was already deposited by the petitioner towards earnest money of the plot, admeasuring about 2200 Sq.mts. The petitioners thereafter sent reply on 19th May 2006 to the Regional Officer of the first respondent, pointing out that the order dated 5th May 2006 was exparte without any reasons and was passed without following principles of natural justice. The petitioners showed their readiness & willingness to pay balance amount of Rs.27,50,000/- since they are in need of said plot for their business and called upon the respondent to allot the plot admeasuring 2200 Sq.mt. The petitioner thereafter obtained relevant papers from the respondent no.1 by filing application under Right to Information Act from the first respondent, on the basis of which the letter dated 5th May 2006 was issued. After going through the Xerox copies of the relevant papers, petitioners learnt that impugned decision / letter dated

5-5-2006 was issued on the basis of the decision of the Board Meeting of the respondent, dated 24-2-2006. The decision to refund the earnest money was taken in the Board Meeting only on the ground that earnest money deposit was required to be paid on 8th April 2005. However, the same was done on 11th April 2005. Thus, there is delay of 3 days. On this ground alone the impugned decision to refund the earnest money was taken.

7. The counsel for the respondent no.1 by filing reply contested the claim of the petitioners, mainly on the ground that invitation to offer was given by the respondent no.1 to the petitioner on 24th March 2005, requesting them to forward demand draft of Rs.27,50,000/- alongwith "blue application form" within a period of 15 days. The period of offer is elapsed on 8th March 2005 and the petitioners deposited the demand draft and "blue application form" by Inward No. 2046 on 11th April 2005, thus there was delay of 3 days in filing request letter of offer by the petitioner. It was also contended that petitioner did not identify the plot in "blue application form".

8. We have given anxious considerations to the rival submissions made by the counsels for the parties. We have also gone through contentions of the petitioner and affidavit in reply of first respondent. The only ground on which the earnest money deposit of Rs.27,50,000/- was directed to be refunded to the petitioner, was that the petitioner delayed aforesaid payment by 3 days. So far as other ground namely petitioner did not identify the plot in their "blue application form" is concerned, it is the case of the first respondent themselves that after receipt of the offer from the petitioner, they have identified plot No. A-799/2. Therefore, as far as this ground is concerned, it is clear that impugned decision is not taken on this ground that the petitioners failed to identify the plot especially when the petitioners are ready and willing to accept plot No. A-799/2, admeasuring 2200 Sq.Mt., situated at TTC Industrial Area, Rabale, District Thane.

9. So far as main ground of refusal on the part of first respondent of allotment of plot in

favour of the petitioner is concerned, namely delay of 3 days in depositing of earnest money is concerned, we find it difficult to appreciate the objection of first respondent. After perusal of the letter at Exh.D, at page 34 of the petition, it is clear that the pay order was drawn on 6-4-2005. Even the "blue application form" was filled in and shown to have been signed along with covering letter on 6-4-2005. After perusal of these documents it is unequivocally clear that pay order for an amount of Rs.27,50,000/- was kept ready by the petitioner on 6-4-2005 itself. We see no reason as to why the petitioner should keep quiet and delay the submissions thereof by 3 days. We have no alternative but to accept the contention of the petitioner that covering letter alongwith pay order and filled in "blue application form" was tried to be submitted with the employee of first respondent, by the representative of the petitioners on 6-4-2005 itself, however, the same was not accepted by the employee of first respondent, for want of non availability of a Senior Officer of first respondent to sign the receipt for the pay order. Next two days namely 9th and 10th being

non-working days, the petitioners were justified in submitting pay order alongwith filled "blue application form" with covering letter on 11-4-2005.

10. At this stage, we also cannot lose sight of an aspect namely on 11-4-2005 the pay order and "blue application form" was accepted by the first respondent. The pay order was encashed and the funds were credited to the accounts of first respondent. What is important is that after deposit of aforesaid pay order on 11-4-2005, first respondent kept silence, almost for the period of one year and for the first time i.e. on 5th May 2006 by the impugned order, petitioner was informed that his earnest money amount is refunded in full.

11. In the background of these circumstances, we are of the opinion that it cannot be said that there was delay on the part of the petitioner in submitting pay order, as per the invitation to offer of first respondent or offer of the petitioner lacks in bona fide. On the contrary, the impugned order seems to be arbitrary and

against the principles of natural justice and equity and good conscience and there is no justification, whatsoever.

12. We therefore, quash and set aside the impugned decision taken in the Board Meeting of the first respondent and consequential order dated 5th May 2006, issued by the Area Manager of the first respondent, directing refund of the earnest amount of Rs.27,50,000/-. We further direct the first respondent to allot and hand over possession of the plot of the land admeasuring 2200 Sq.mt., being plot No. A-799/2, TTC, Industrial Area, Rabale, District Thane on the terms and conditions mentioned in the "blue application form" and as per the usual policy to the petitioners, on depositing balance amount of consideration.

13. The petitioner by way of earnest money deposit has already on 11-5-2005 by way of pay of pay order, deposited an amount of Rs.27,50,000/- with first respondent towards 50% price of the plot offered by the first respondent. If in normal course the petitioner would have granted the aforesaid plot and transaction had gone

through, the petitioner would have had to pay balance premium of Rs.27,50,000/- by June 2005. In the circumstances, we are therefore, inclined to direct the petitioner to pay interest at the rate of 8% per annum on the amount of balance premium of Rs.27,50,000/-, from June 2005 till the date of payment. We further direct the first respondent to allot and hand over the possession of aforesaid plot in terms of their procedure and policy, within two weeks, from the date of receipt of this order, on payment of balance premium of Rs. 27,50,000/- with interest at the rate of 8% per annum on this amount from June 2005 till the date of the possession.

14. Rule made absolute in above terms with no orders as to costs.

[R. V. MORE, J.] **[F. I. REBELLO, J.]**